



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 12, 1998

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR98-0117

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111600.

The Texas Department of Public Safety (the "department") received a request for the "document written by Lt. Michael Wilson regarding his investigation and recommendation against Trooper Joe Don Abernathy." You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and have reviewed the information submitted.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .


You state there was a criminal investigation which lead to the charges of "Deadly Conduct." An intertwining administrative investigation of the "same facts" was also conducted during the same time period which you state "was affected by the criminal process." You state that the trooper accepted an "Agreement for Pre-Trial Diversion" in connection with the charges against him in the criminal case and consequently the case did not end in conviction or

deferred adjudication within the section 552.108(a)(2) exception. However, you do not explain how the pre-trial diversion falls out of the definition of a conviction or deferred adjudication. Consequently section 552.108(a)(2) does not apply to the instant facts.

Alternatively, you assert that marked portions of the requested information come within section 552.108(a)(1) so that release of the information would interfere with the detection, investigation or prosecution of crime. You state that the sentences are excepted because release would interfere with law enforcement's detection, investigation, and prosecution of crime in Cherokee County. We observe that whether disclosure of particular records will unduly interfere with law enforcement must be determined on a case-by-case basis. Open Records Decision No. 409 (1984). It is not readily apparent nor have you explained how the release of investigative information would unduly interfere with law enforcement or prosecution. Open Records Decision No. 444 (1986). Consequently, the markings do not come within section 552.108(a)(1) and the document must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref: ID# 111600

Enclosures: Submitted documents

cc: Ms. Terrie Gonzalez
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